

No. 14/13/87-6 Lab/1112.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. T.C. Haryana, Chandigarh *versus* Gulab Singh.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 474 of 90

Date of receipt : 1-2-1989

Date of decision : 1-12-1994

SHRI GULAB SINGH, VILLAGE GARWA, P.O. AHAL,
TEH. SIWANI, DISTT. BHIWANI

Versus

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.
2. GENERAL MANAGER, HARYANA ROADWAYS, BHIWANI.

Present :

Shri S.S. Gupta, for the workman.

Shri Jagdish Pawar, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Gulab Singh and the above mentioned management for adjudication to this Court,--*vide* Labour Department letter No. BWN/8-89/4082--88, dated 27th January, 1989 :--

Whether termination of services of Gulab Singh, Driver No. 15, is justified and in order ? If not, to what relief is he entitled ?

2. Gulab Singh, workman was employed as Driver in Haryana a Roadways, Bhiwani since 10th January, 1980. On 4th September, 1984, he was on duty with bus No. 2147 on Rohtak-Loharu route and the said bus was checked near Kalanaur at 12.50 P.M. under the supervision of the General Manager. At that time, the bus was going at a speed of 60 or 65 K.M. per hour, but was not carrying any passenger. The bus was stopped and on enquiry, it was revealed that Gulab Singh, driver had gone to take liquor and he did not park the bus at the booth on time and on that account, no passenger could board the bus. The workman was medically examined from Civil Hospital, Rohtak and he was reported to have consumed liquor. On these allegations, a charge sheet was served upon him. The workman denied the charges in his reply and it was followed by domestic enquiry. On the basis of report of Enquiry Officer. His services were terminated,--*vide* order dated 15th October, 1985. According to the workman, the enquiry was conducted against him in violation of the principles of natural justice and it was not fair and proper. He, therefore, claimed that his termination was illegal and unjust. He raised

demand notice accordingly, praying reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, stated that the domestic enquiry had been held in accordance with rules and principles of natural justice and the workman, thus, has no case. It was also stated that full opportunity to establish his innocence was provided to him during enquiry. According to the management, as the Enquiry Officer has held him guilty, the services of the workman were rightly terminated.

4. On the above pleadings of the parties, the following issues were framed on 21st August, 1989 by the then Presiding Officer, Labour Court, Rohtak :--

- (1) Whether the domestic enquiry held by the repondent is fair and proper ?
- (2) Whether the present reference is not maintainable as alleged in para 2 of the preliminary objection ?
- (3) As per reference.

5. Issue No. 1 regarding domestic enquiry, was treated as preliminary issue. The parties led evidence on preliminary issue. I have heard Shri S.S. Gupta, A.R. of the workman and Shri Jagdish Pawar, A.R. of the management and have gone through the case file. My findings on the preliminary issue are as under :--

Issue No. 1:

6. The management examined Shri Kehar Singh Alhawat, Traffic Manager, who conducted domestic enquiry in this case, as MW-1. He stated that the parties appeared before him on 12th August, 1985 and stated that the examined the prosecution witnesses in the presence of the workman, who was allowed to cross-examine them and who was afforded opportunity to lead his defence. He testified the copies of proceedings of the enquiry as Ex. M-6 and copy of his report as Ex. M-7. Gopal Krishan Chanda was examined as MW-2 and he testified various documents leading to the termination of services of the workman, as Ex. M-10 to Ex. M-13. He, however, admitted in his cross-examination that previously, charge sheet was served upon the workman, a copy of which was Ex. WX and that enquiry was held on that charge sheet and the report of the Enquiry Officer was also received on the earlier charge sheet.

7. Gulab Singh, workman appeared as MW-1 and stated that during the first enquiry, he was not afforded opportunity to cross-examine the witnesses and that he was not allowed to lead defence evidence. He claimed that during the second enquiry, he did not receive and notice and he was not summoned by the Enquiry Officer. He, however, admitted his signature on Ex. M-6 as also the enquiry proceedings.

8. A perusal of Ex. M-6, which is admitted by the workman in his cross-examination, would show that Gulab Singh, workman appeared before the Enquiry Officer in second enquiry held on 12th August, 1985. On the same day, the statement of Nafe Singh, Inspector witness of the department, was recorded, but Gulab Singh did not cross-examine him and thereafter Gulab Singh made his own statement on oath. It is also manifest from enquiry proceedings that Gulab Singh had opted not to

lead any defence evidence,--vide his statement recorded on 12th August, 1985 and thereafter the Enquiry Officer submitted his report, copy of which is Ex. M-7. It is to be noted that Gulab Singh, in his statement before Enquiry Officer has admitted that he was medically examined at Rohtak and that there was no passenger in the bus at the time of inspection.

9. From the above, it would be seen that the workman participated in the enquiry and that he was afforded opportunity to cross-examine the solitary prosecution witnesses. It is also manifest that the workman had opted not to lead any defence evidence. On the other hand, the workman admitted that he was medically examined and that there was no passenger in the bus at the time of inspection.

10. Shri S.S. Gupta, A.R. of the workman argued that in the absence of Medical Officer, who was not examined before the Enquiry Officer, the charges cannot be said to have been proved, and the enquiry report was based on no evidence. I am afraid, I am not in agreement with this line of argument, because the Enquiry Officer had taken into account the report of the Medical Officer, while giving his conclusion. As such, the workman is not entitled to draw any benefit from the observations made by our own High Court in the authority reported as *Bhajan Singh versus State of Punjab & Others*, 1981(1) LIN-453.

11. Much emphasis was laid on the fact that the workman was served with a charge sheet earlier on the same allegations and that enquiry was held by the same Enquiry Officer earlier. In this connection, my attention was drawn to the copy of earlier enquiry report dated 17th December, 1984, which is Ex. M-8. Shri S.S. Gupta, A.R. of the workman, argued that the same person could not be appointed as Enquiry Officer again because he had already expressed his opinion in the earlier enquiry and in support of his argument, he cited the authority reported as *S. Amarjit Singh Bhatnagar versus The State of Punjab & Another*, 1991-LAB.I.C.-1829. This authority is, however, distinguishable on facts, because in this case, the second enquiry was in progress when the same was challenged through writ petition and the Hon'ble High Court had ordered that Government should appoint an Enquiry Officer, other than the previous officer. In the instant case, the previous charge sheet was found defective and it was amended as pointed out by the Enquiry Officer in his first report and the enquiry was completed, culminating in the termination of services of the workman. It would be noted that the workman has nowhere alleged any bias against Shri K.S. Ahlawat, Enquiry Officer, at any stage, nor has he alleged any bias against him even in his statement made on 4th February, 1994. In the absence of any bias against the Enquiry Officer, I am of the opinion that the report of Shri Ahlawat cannot be set aside on that ground alone. This argument of Shri S.S. Gupta, A.R. of the workman, is hereby rejected.

12. In the light of discussion above, I hold that the domestic enquiry conducted in this case, is just and proper and the preliminary issue is answered in favour of the management.

13. As the services of the workman had been terminated by the management after holding a just and proper enquiry, the same does not fall within the ambit of "retrenchment" as defined in Section 2(oo) of the Act and as such the termination of services of the workman is

justified and in order and he is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

Dated : The 1st December, 1994

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No.

Dated :

A copy, with spare copy, is forwarded to the Financial Commissioner & Secretary to Government Haryana, Labour & Employment Department Chandigarh for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6 Lab/1113.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s. Luxmi Enterprises, 5/136, Nishan Hut, Faridabad versus Baba Ditta Saini.

BEFORE SH. N.L. PRUTHI, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 320 of 87

IN THE MATTER OF INDUSTRIAL DISPUTE

Between

SH. BABA DITTA SAINI C/O AITUC,
OFFICE, MARKET NO. 1, FARIDABAD

And

M/S LUXMI ENTERPRISES, 5/136,
NISHAN HUT, N.I.T. FARIDABAD

Present :

Shri Darshan Singh, Authorised Representative, for the workman.

Shri Pradeep Sharma, Authorised Representative, for the management.

AWARD

Under the provisions of section 10 (1)(d) of Industrial Disputes Act, 1947, the Government of Haryana have,--vide Endst. No. OV/FD/124-

87/38727-32, dated 30th September, 1987 referred the following dispute between the parties above named for adjudication :--

Whether termination of service of Sh. Baba Ditta is legal & justified. If not, to what relief is he entitled to ?

2. The case of the workman is that he had been permanent workman of the Management since 20th February, 1985 and was in receipt of Rs. 700 per month as his wages. That without any notice his services were terminated in illegal manner on 23rd June, 1987 without even paying him any compensation etc. So, the workman has claimed his reinstatement with continuity of service and full back wages.

3. The case of the Management is that the services of the workman were never terminated. Rather, he had himself left the job and took his full & final dues. Objections have also been taken that the reference on the above account is bad in law and also that the Respondent is an establishment covered and registered under the Punjab Shops & Commercial Establishment Act where under there is no provisions for reinstatement of an employee.

4. In the rejoinder, pleas taken in the claim statement have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issues were framed for adjudication on 9th February, 1988 :--

- (1) As per reference ?
- (2) Whether the claimant himself had taken his full & final dues and left the employment ? OPM
- (3) Whether the respondent establishment is covered under Punjab Shops & Commercial Establishment Act ? OPM

6. I have heard authorised representative for the parties and perused material facts on record. My findings on the issues framed with reasons therefor are as under. (Issue No. 1 is proposed to be discussed towards the end).

Issue No. 2

7. Manish Chopra examined as MW-1 stated that workman Baba Ditta who was appointed as Turner on 27th March, 1985 had himself left the job and received his full & final payment,--vide voucher Ex. M-1. The witness identified the signatures of the workman on the voucher. He also identified his own signatures and the signatures of his father who used to look after the accounts on voucher Ex. M-1. The witness also stated that the workman had taken an advance of Rs. 100 and he identified the signature of workman on voucher Ex. M-2. According to this witness, the workman never reported for duty after taking his full & final dues.

8. Workman Baba Ditta examined as W-1, admitted payment on vouchers and that his signatures were there on voucher Ex. M-1 and voucher Ex. M-2. He also admitted that he had received payment shown in voucher Ex. M-1 but stated that he was given to understand that this payment was in respect of overtime. He however, took a

stand that his signatures were taken on a blank voucher. He did not take such a stand with regards to voucher Ex. M-2,--vide which an advance of Rs. 100 was paid to him. It was also admitted by him that he had not made a complaint to the Labour Department that the signatures of all workers were obtained on blank vouchers.

9. The workman admits his signatures on voucher Ex. M-1 and Ex. M-2. He also admits having received the payment although in respect of Ex. M-1 he stated that the amount related to overtime. It is not his plea that he had been paid an amount of Rs. 2625/90 as overtime on 23rd June, 1987. Rather, in the voucher which is filled in English and bears the signatures of the workman in English there is a mention that the amount being paid to the workman is in respect of one month pay lieu of notice, service compensation, casual leave payment and 23 days wages for the month of June, 1987. In his examination-in-chief, the workman did not state that his signatures on Ex. M-1 and M-2 were obtained on blank vouchers. In his cross-examination also, he did not explain the circumstance under which his signatures were obtained on blank papers. So, it stands proved that the workman had received an amount of Rs. 2625/90 as his full and final payment on 23rd June, 1987. This issue is thus decided in favour of the Management and against the workman.

Issue No. 3 :

10. The Management has not led any oral or documentary evidence to show that it is registered or covered under Shops and Commercial Establishments Act. Rather, it is proved that it was engaged in the process of manufacturing with the aid of five lathe (power) machines. So, holding that the establishment of the Respondent is not covered under Punjab Shops and Commercial Establishments Act, this issue is decided against the Management and in favour of workman.

Issue No. 1:

11. In view of my findings on Issue No. 2, it is held that the services of the workman were not terminated but he had himself left the job and had received payment of his full and final dues. Thus, he is neither entitled to reinstatement nor any other benefit. An award is passed accordingly.

N.L. PRUTHI,

Dated the 24th May, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 1069-70, dated 26th May, 1994

A copy is forwarded to the following :

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Faridabad.

N.L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.